

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MICHAEL R. TURNER,

:

Petitioner, : Case No. 2:07-cv-595

:

-vs- : District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

STUART HUDSON, Warden,

:

Respondent.

**DECISION AND ORDER STRIKING PETITIONER'S NOTICE OF ADDITIONAL
WITNESS DESIGNATION**

This capital habeas corpus case is before the Court on Petitioner's Notice of Additional Witness Designation (Doc. No. 113), filed January 26, 2010, and designating Lt. Pierce Elliott of the Franklin County Sheriff's Department to appear at the evidentiary hearing in this case and

introduce visitation records from the Franklin County Correctional Center I concerning Michael Turner, and . . . testify to the policies and procedures for professional visits between inmates and attorneys and their investigators at the Franklin County Correctional Center I and in the Franklin County Courthouse.

Id.

On December 2, 2009, the Court entered an Order Granting in Part and Denying in Part Petitioner's Renewed Motion for Evidentiary Hearing (Doc. No. 93, ruling on Doc. No. 83). Almost every witness Petitioner sought to present was allowed, all over the Warden's opposition. However, Lieutenant Elliott was not mentioned in the Motion, nor has Petitioner ever sought to expand the scope of the hearing to include Lt. Elliott's testimony. Under 28 U.S.C. § 2254(e)(2), the Court

cannot hear evidence beyond the record created in the state court unless Petitioner shows that he was prevented from developing the record in state court proceedings; no such showing has been made as to Lt. Elliott or any evidence he might present. So far as the Court can determine on short research, Lt. Elliott is not a person from whom Petitioner sought to obtain discovery. Finally, the addition of Lt. Elliott was made without compliance with S. D. Ohio Civ. R. 7.3.

Accordingly, Lt. Elliott is stricken as a witness without prejudice to a motion to add him which satisfies the requirements for an evidentiary hearing under § 2254(e)(2) and S. D. Ohio Civ. R. 7.3.

January 26, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge